

EXHIBIT A

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Michael Ben-Jacob - October 12, 2021

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

IN RE:)
)
)
CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
)
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C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
MICHAEL BEN-JACOB
VOLUME II
DATE: October 12, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL
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9 (Pages 358 to 361)

<p style="text-align: right;">Page 358</p> <p>1 pension fund within the meaning of Article 4, 2 Article 10 and Article 22 of the Double 3 Taxation Convention between Denmark and the 4 United States of America, and request Acupay 5 System, LLC to apply for a full refund of 6 excess withholding tax."</p> <p>7 Do you see that?</p> <p>8 A I do.</p> <p>9 Q What did you do to satisfy yourself 10 that you could make that representation?</p> <p>11 A To the best of my recollection, 12 this representation seems to be a sort of 13 mixed question of U.S. law and possibly 14 Danish law.</p> <p>15 For example, the words "qualifying 16 U.S. pension fund," to the extent that that 17 would be understood under U.S. law, I 18 consulted with -- to the best of my 19 recollection and belief, consulted with our 20 internal -- our Kaye Scholer's internal 21 pension experts Kathleen Wechter and Arthur 22 Woodard.</p> <p>23 And with respect to any issues of 24 Danish law, I confirmed them with Jerome 25 Lhote, who had represented to me that he had</p>	<p style="text-align: right;">Page 359</p> <p>1 those questions confirmed by Danish counsel.</p> <p>2 Q Did you provide to Ms. Wechter or 3 Mr. Woodard with the forms from the payment 4 agents that you were signing?</p> <p>5 MR. DEWEY: Objection.</p> <p>6 A I don't have a specific 7 recollection of whether I provided the forms 8 to Mr. Woodard or Ms. Wechter or whether the 9 client group, someone in the client group 10 provided it, but I do have the impression 11 that one or both of them saw the actual 12 forms.</p> <p>13 Q Sir, could I ask you, please, to 14 turn to Exhibit 2110.</p> <p>15 A 2110, I don't seem to have it here.</p> <p>16 MR. DEWEY: It's one of the new 17 ones. Here.</p> <p>18 A I have the exhibit.</p> <p>19 If you bear with me, I would like 20 to read it.</p> <p>21 Q I'm only going to ask you about 22 your e-mail to Mr. Woodard on or about 23 February 7, 2011.</p> <p>24 A Yes, I understand that's the -- 25 that's the exhibit.</p>
<p style="text-align: right;">Page 360</p> <p>1 I'm reading it now. (Witness reviewing.)</p> <p>3 Okay. I have read through the 4 e-mail. I'm prepared for your questions.</p> <p>5 Q Sir, in the second part of the 6 page, there's a section that begins "By way 7 of background."</p> <p>8 Do you see that?</p> <p>9 A I do.</p> <p>10 Q And you say, "The contemplated 11 transaction is an ex-dividend play that would 12 take advantage of certain loopholes in German 13 tax law and permit our clients to receive a 14 tax refund from the German government for 15 taxes that they did not in fact pay."</p> <p>16 Now, do you see that?</p> <p>17 A I do.</p> <p>18 Q Had you ever previously been 19 involved in any transaction where someone 20 sought to receive a tax refund from a 21 government for taxes that they did not in 22 fact pay?</p> <p>23 MR. DEWEY: Objection.</p> <p>24 A So I don't have a specific 25 recollection of this e-mail, but as I sit</p>	<p style="text-align: right;">Page 361</p> <p>1 here today, I believe that you're 2 misinterpreting the phrase "tax refund from 3 the German government for taxes that they did 4 not in fact pay."</p> <p>5 That's a -- that would be my way of 6 saying to another tax practitioner, as noted 7 further in the e-mail, that the dividend tax 8 was withheld at source, so that the client or 9 the owner of the shares was not out-of-pocket 10 for the tax paid.</p> <p>11 Q The client had not paid the tax. 12 Right?</p> <p>13 A Oh, sure, he did. It was simply 14 withheld at source by the company.</p> <p>15 As a withholding -- whenever, under 16 the general tax principles, an entity 17 withholds tax, they're withholding it on 18 behalf of the owner of the -- of the income, 19 the owner of the dividend, which in this case 20 would be the clients.</p> <p>21 Q If you look at the bottom of the 22 page, sir, you say, "Note that as mentioned 23 above, the German company has paid a tax in 24 respect of the dividend amount."</p> <p>25 Do you see that?</p>